

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

July 23, 2012

George B. Elliott, III
38246 Yacht Basin Road
Ocean View, DE 19970

**RE: George B. Elliott, III v. Eastern Shore Electric Services, Inc.
C.A. No. S11A-12-003**

Date Submitted: April 13, 2012

Dear Mr. Elliott:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's dismissal of your claim for unemployment benefits for failing to appear for a hearing before the Board on your appeal of the Appeals Referee's finding that you were not entitled to unemployment benefits. You were the President and a part-owner with your wife of Eastern Shore Electrical Services, Inc., a commercial electrical contracting business. You and your wife decided to shut the company down due to a lack of profitable work around March or April 2011. After shutting the company down, you continued to perform administrative duties associated with winding up the company's affairs. When your relationship with your wife deteriorated, she terminated your employment with the company on June 22, 2011.

You filed a claim for unemployment benefits on July 31, 2011. The Claims Deputy referred your claim to the Appeals Referee for an initial hearing and determination on whether or not your ownership interest in the business affected your eligibility for unemployment benefits. The Appeals Referee found that while your ownership interest in the company did not effect your eligibility for

unemployment benefits, your voluntary decision to shut your company down did disqualify you from receiving unemployment benefits under 19 *Del.C.* § 3314(1).¹ You appealed the Appeals Referee’s decision to the Board. The Board scheduled a hearing on your appeal for November 29, 2011, and sent you notice of the date and time for the hearing to the address that you listed in your claim for unemployment benefits. When you failed to appear for the hearing, the Board dismissed your appeal. You then filed this appeal.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board’s findings, and that such findings are free from legal error.² Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³ The Board’s findings are conclusive and will be affirmed if supported by “competent evidence having probative value.”⁴ The appellate court does not weigh the evidence, determine

¹ “An individual shall be disqualified for benefits: (1) for the week in which the individual left work voluntarily without good cause attributable to such work and for each week thereafter...”

² *Unemployment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

³ *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. disp.*, 515 A.2d 397 (Del. 1986).

⁴ *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

questions of credibility, or make its own factual findings.⁵ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁶ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.⁷

DISCUSSION

You argue that you missed the Board hearing because you failed to receive notice of the date and time for the hearing. The notice of the date and time of your hearing before the Board was sent to the address you provided to the Department of Labor when you filed your claim for unemployment benefits. A letter that is correctly addressed and stamped is presumed to be received by the addressee.⁸ Therefore, this Court's appellate review of the Board's decision to dismiss your appeal is limited. Since the Board did not hold a hearing on the merits of your case, the only issue this Court can properly address is whether or not the Board abused its discretion in dismissing your case. This issue has been addressed previously in *Archambault v. McDonald's Restaurant*.⁹ In that case, the Court held:

The Board maintains statutory authority to promulgate regulations designed to ensure the prompt and orderly determination of the parties' rights. In that regard, the Board has adopted Unemployment Insurance Appeals Board Rule B which provides in pertinent part, that "[a]ll parties are required to be present for a hearing at the scheduled time. Any party who is not present within 10 minutes after the scheduled start time for hearing shall be deemed to waive his right to participate in said

⁵ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁶ 29 *Del.C.* § 10142(d).

⁷ *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

⁸ *Lively v. Dover Wipes*, 2003 WL 21213415 (Del. Super. May 16, 2003).

⁹ 1999 WL 1611337 (Del. Super. Mar. 22, 1999); See also *Strazzella v. Joe Tejas, Inc.*, 2008 WL 376354 (Del Super. Feb. 12, 2008).

hearing.” The Court cannot conclude that the Board abused its discretion by dismissing Claimant’s appeal. This Court has previously recognized “the importance of adhering to a hearing schedule to efficiently manage and dispose of cases and the need to enforce rules such as Rule B to engender cooperation from the interested parties.” Thus, the Court concludes that the Board did not act arbitrarily by dismissing Claimant’s appeal for failure to appear.¹⁰

The Board in this case did not abuse its discretion when it dismissed your appeal for not appearing for the hearing. You were provided with notice and an opportunity to be heard. The written notice informed you that your “failure to appear for your hearing in a timely manner can result in your appeal being dismissed.” The Board waited the customary 10 minutes after the scheduled start time, but you failed to appear. You were put on notice of the consequences of not appearing at the hearing on time and, therefore, you have no reason at all to complain about the Board’s dismissal of your appeal and claim for unemployment benefits. The Board’s decision to dismiss your appeal is in accordance with the applicable law and supported by substantial evidence in the record.

CONCLUSION

The Unemployment Insurance Appeal Board’s decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/e/ E. Scott Bradley

E. Scott Bradley

oc: Prothonotary
cc: Parties
Unemployment Industrial Board

¹⁰ *Archambault*, 1999 WL 1611337, at *2.